

Legislative Proposals Under Consideration

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**Presented to the
Revenue Stabilization and Tax Policy Committee**

**Third Meeting in 2009
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Legislative Proposals Under Consideration

Overview

- **Today we will present three legislative proposals related to:**
 - **Withholding on oil and gas proceeds and pass-through entities;**
 - **Tax Increment Development Districts (TIDDs); and**
 - **Tax administration generally**
- **These proposals would clarify rules, simplify and improve compliance, and reduce administrative burdens on TRD**
- **With some differences noted below, all of these proposals were introduced in this year's Legislative Session**
- **The Legislative Council Service has prepared drafts of these proposals**
 - **These are preliminary discussion drafts, which we are presenting today in order to allow all interested parties ample time to comment on them before the Committee considers legislation for endorsement**
- **These proposals may be considered for recommendation by the Governor in the 2010 Legislative Session, but the Governor has not endorsed any of the proposals**

Legislative Proposals Under Consideration

Withholding on Oil and Gas Proceeds and Pass-Through Entities

- **The Legislative Council Service draft is .179344.1SA**
- **This draft legislation would make four important changes to the withholding rules:**
 - 1. Combine the provisions for withholding on pass-through entities with the oil and gas proceeds withholding provisions;**
 - 2. Add clarifying definitions and rules for this withholding;**
 - 3. Tighten rules that allowed nonresidents to avoid New Mexico income tax; and**
 - 4. Make pass-through entity withholding due quarterly, while allowing use of prior-year income for computing withholding**
- **This legislation is broadly similar to HB-8 (Speaker Lujan) introduced in this year's session**
- **However, this draft legislation differs importantly in that it incorporates provisions that address concerns raised in numerous meetings with representatives of the oil and gas industry, CPAs and others; in particular, this draft legislation does not apply to residents**

Legislative Proposals Under Consideration

Withholding on Oil and Gas Proceeds and Pass-Through Entities – Cont.

- **Specific changes to current law:**
 - **Residents would remain exempt from this withholding, but nonresidents could no longer “opt out” or avoid withholding by simply having a New Mexico mailing address**
 - **Language is added to allow all costs deducted by a remitter or paid to a remitter for expenses related to production or cessation of production from a well to be taken into account when computing withholding on oil and gas proceeds**
 - **Clarifies that withholding is based on the amount of the remittee’s net income, which is after all related deductions except the amount of income tax withheld**
 - **The withholding rates under both Acts are clarified, but unchanged from current law**
 - **Trusts and estates that distribute income to beneficiaries are made pass-through entities for withholding purposes**
 - **Single member LLCs that are “disregarded entities” for federal income tax purposes are not required to withhold**

Legislative Proposals Under Consideration

Withholding on Oil and Gas Proceeds and Pass-Through Entities – Cont.

- **Pass-through entities are allowed to base withholding on net income in the previous year, so long as that was a full year**
- **There is a new threshold for withholding of \$30 per quarter (equivalent to \$10 per month, the threshold for pension and annuity withholding); this threshold corresponds to nearly \$2,500 of annual income**
- **Definitions for several key terms are added, such as “net income” and “partnership”**
- **Pass-through entities would no longer be required to withhold on net income of the federal, state, local or tribal governments, or nonprofits**
- **Employers with more than 50 employees that do not have a Department of Workforce Solutions filing requirement would be required to electronically file an information return with TRD and the Workers’ Compensation Administration**

Legislative Proposals Under Consideration

Tax Increment Development Districts (TIDDs)

- **The Legislative Council Service draft is .179390.1SA**
- **This draft legislation would make two important technical changes to the TIDD rules:**
 - 1. Amend the gross receipts tax increment calculations to correct an omission, more closely conform to tax reporting, and to specify how certain estimates used in the calculations are made; and**
 - 2. Amend the list of municipal and county gross receipts taxes that can be dedicated to a TIDD to remove obsolete local option taxes and to add others that are not currently listed**
- **The draft legislation would also provide a funding mechanism for necessary TRD work related to TIDDs**
- **The technical changes in this legislation are the same as in SB-201 (Senator B. Sanchez) introduced in this year's Legislative Session, but does not contain the changes similar to those in HB-451 (Representative Lundstrom) which was enacted**

Legislative Proposals Under Consideration

Tax Increment Development Districts (TIDDs) – Cont.

- **Specific changes to current law:**
 - **The phrases “base gross receipts taxes” and “gross receipts tax increment”, which are currently defined in terms of tax collections, are replaced or redefined in terms of taxable gross receipts before the food and medical deduction**
 - **Without this change, there would be no gross receipts tax increment when there is a food or medical deduction**
 - **“Base gross receipts taxes” must currently be determined by an estimate which will be difficult to develop when there was activity in the TIDD in the base year**
 - **The draft legislation specifies that the estimate is to be based on actual receipts in the first year a district has a dedicated gross receipts tax increment**
 - **A three percent administrative fee is imposed on the amount of State gross receipts tax that is dedicated to a TIDD**
 - **Proceeds from this administrative fee would be appropriated to TRD for systems and other administrative work related to TIDDs**

Legislative Proposals Under Consideration

Tax Administration

- **The Legislative Council Service draft is .179343.1SA**
- **This draft legislation would make a number of needed improvements to the tax administration rules:**
 - 1. Simplify and improve the protest and hearing process for taxpayers who have disagreements with the Department;**
 - 2. Allow awarding of administrative and litigation costs related to credits;**
 - 3. Increase the threshold for required monthly filing of CRS taxes from its 1991 level of \$200 to an inflation-adjusted level of \$300;**
 - 4. Give the Secretary limited authority to delay accrual of interest for persons affected by disasters or by military or terroristic actions;**
 - 5. Corrects an oversight in the 2007 change to the tax rate for food and medical hold harmless distributions to large municipalities and counties; and**
 - 6. Help the Department administer the tax law more effectively**

Legislative Proposals Under Consideration

Tax Administration – Cont.

- **The provisions in this legislation are the same or very similar to those in HB-266 (Representative Trujillo), HB-490 (Representative Taylor) and SB-641 (Senator Cisneros) introduced in this year's Legislative Session**
- **Specific changes to current law:**
 - **The protest period is extended from 30 days to 90 days**
 - **Taxpayers may be allowed more than one informal hearing**
 - **Personal income taxpayers may be represented in a hearing by an enrolled agent**
 - **If a taxpayer prevails in an administrative or court proceeding related to a credit, cost will be awarded to the taxpayer**
 - **The gross receipts tax rate for determining the hold harmless distribution to large local governments would be the lower of the rate in effect on January 1, 2007 or the current rate in effect**
 - **The threshold required for additional review of refunds and abatements by the Department's Legal Counsel (as delegates of the Attorney General) is increased from \$10,000 to \$25,000**

Legislative Proposals Under Consideration

Tax Administration – Cont.

- **Corporate income and franchise taxes could be subject to setoff under the Tax Refund Intercept Program for debts owed by an employer**
- **Disbursements of attorney's fees from the TAA suspense funds would be allowed for all tax litigation, not just oil and gas tax cases**
- **The current monthly threshold for requiring electronic or other special payments is reduced from \$25,000 over three years, to \$20,000 in 2011, 15,000 in 2012, and \$10,000 in 2013 and later years**
- **The special payment rules are expanded to include the Alternative Fuel Tax Act, the Cigarette Tax Act, the Tobacco Products Act, the Liquor Excise Tax Act, and the Local Liquor Excise Tax Act**
- **The special payment rules would also be expanded to cover third-party payers such as payroll service companies**
- **Taxpayers would be allowed to recoup refunds and credits in special circumstances when the associated tax was paid by the wrong taxpayer**

Legislative Proposals Under Consideration

Tax Administration – Cont.

- **The minimum civil penalty for failure to pay taxes is increased from \$5.00 to \$25.00 and for willful intent to evade taxes from \$25.00 to \$50.00**
- **The interest and penalty provisions are amended to address a conflict in 2007 legislation (§7-1-67), to simplify the interest calculations, and to clarify that penalty applies only to tax amounts**
- **Corporations would be allowed to change their method of accounting without having to request approval from the Secretary of TRD**
 - **This is a conforming change, since corporations are already required under the current statute to use the same method of accounting that they use for federal purposes**
- **The Department could serve electronic warrants on financial institutions**
- **The Department would be permitted to enter the State Income Tax Levy Program with the U.S. Department of the Treasury and charge fees for levies and offsets**